

108TH CONGRESS  
2D SESSION

# S. 2957

To encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 2004

Mr. KYL (for himself, Mr. SMITH, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ukraine Democracy  
5       and Fair Elections Act of 2004”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) The United States supports the promotion  
9       of democracy, free, fair, and transparent elections,

1 and respect for human rights and the rule of law in  
2 Ukraine consistent with the commitments of  
3 Ukraine as a member country of the Organization  
4 for Security and Cooperation in Europe (hereinafter  
5 referred to as the “OSCE”).

6 (2) The United States has a vital interest in the  
7 independence and sovereignty of Ukraine and in its  
8 successful integration into the European community  
9 of democracies.

10 (3) Elections conducted by the Government of  
11 Ukraine between 1994 and 2004 have not satisfied  
12 the criteria established for free, fair, and trans-  
13 parent elections consistent with OSCE and Euro-  
14 pean democratic standards.

15 (4) Georgiy Gongadze, Igor Alexandrov, and  
16 other independent journalists in Ukraine who sup-  
17 ported democracy and published critical reports con-  
18 cerning governmental actions have been murdered or  
19 have disappeared and are presumed dead.

20 (5) Former government officials of Ukraine  
21 have made credible allegations and produced evi-  
22 dence that top officials of the government were in-  
23 volved in the disappearances.

1           (6) The Government of Ukraine, led by Presi-  
2           dent Leonid D. Kuchma and Prime Minister Viktor  
3           Yanukovych—

4                   (A) systematically harasses and represses  
5           independent media and independent trade  
6           unions and journalists;

7                   (B) actively suppresses freedom of speech  
8           and expression and encourages a virtual black-  
9           out on national television stations of the main  
10          democratic opposition candidate;

11                  (C) uses police to block the transit by land  
12          of opposition candidates and refuses access for  
13          the airplane of the opposition candidates to  
14          land at city airports for campaign appearances;

15                  (D) uses state and city dump trucks and  
16          bulldozers to block access of voters to city  
17          squares for appearances by opposition can-  
18          didates;

19                  (E) denies access of opposition candidates  
20          to rent government-owned auditoriums and  
21          public places for meetings with voters; and

22                  (F) denies postal service delivery of opposi-  
23          tion campaign literature.

24           (7) In spite of statements by President Kuchma  
25          and Prime Minister Yanukovych that the presi-

1       dential election to be held during 2004 will be free,  
2       fair, and transparent with an honest ballot count,  
3       the presidential election of October 1999, the na-  
4       tional referendum of 2000, the parliamentary elec-  
5       tion of March 2002, and recent by-elections to Par-  
6       liament and city mayoral races, including the may-  
7       oral race in Mukachevo in spring 2004, were deter-  
8       mined by OSCE and other local and international  
9       observers to be fundamentally unfair.

10       (8) These elections failed to meet OSCE stand-  
11       ards for democratic elections as formulated in the  
12       1990 Copenhagen Document, and were marred by  
13       significant abusive and illegal misconduct that was  
14       publicly approved at the highest levels of the govern-  
15       ment, including—

16               (A) the harassment, arrest, and false dis-  
17               qualification of opposition candidates;

18               (B) the arrest and beating by the police of  
19               members of Parliament who were acting as offi-  
20               cial precinct election observers;

21               (C) the denial of equal and fair access by  
22               opposition candidates to the state-controlled tel-  
23               evision, radio, and print media, and the denial  
24               of the use of the postal system for sending op-  
25               position campaign mail to voters;

1 (D) the seizure of equipment and property  
2 of independent nongovernmental organizations,  
3 radio stations, and press organizations and the  
4 harassment of their staff and management,  
5 causing several individuals to flee to foreign  
6 countries for their safety;

7 (E) the implementation of voting and vote  
8 counting procedures that were neither trans-  
9 parent nor legal; and

10 (F) the implementation of a campaign of  
11 intimidation directed against opposition activ-  
12 ists, domestic election observer organizations,  
13 and opposition and independent media, includ-  
14 ing denying newsprint and access to printing  
15 plants to the independent media.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
19 TEES.—The term “appropriate congressional com-  
20 mittees” means the Committee on Foreign Relations  
21 of the Senate and the Committee on International  
22 Relations of the House of Representatives.

23 (2) SENIOR GOVERNMENT OFFICIAL.—The term  
24 “senior government official” means, with respect to  
25 Ukraine—

1 (A) an individual who—

2 (i) is an official of the Government of  
3 Ukraine, including the president, the prime  
4 minister, a deputy prime minister, a gov-  
5 ernment minister, a chairman or member  
6 of a state committee, including the Central  
7 Election Commission or a regional or local  
8 election commission, a member of the  
9 Presidential Administration, a member of  
10 Parliament, a judge, a law enforcement of-  
11 ficer, a prosecutor, a regional governor, a  
12 mayor, an administrator, and the head of  
13 the Security Services, the State Tax Ad-  
14 ministration, or the State Customs Serv-  
15 ices; and

16 (ii) is personally involved in the sup-  
17 pression of freedom and free, fair, and  
18 transparent elections in Ukraine; and

19 (B) any other individual determined by the  
20 Secretary of State to be personally involved in  
21 the formulation or execution of policies or ac-  
22 tivities that are in contradiction of internation-  
23 ally recognized human rights and free, fair, and  
24 transparent elections standards.

1 **SEC. 4. DECLARATION OF POLICY.**

2 Congress—

3 (1) expresses its support for individuals and or-  
4 ganizations in Ukraine that promote—

5 (A) democracy, free, fair, and transparent  
6 elections, and respect for human rights and the  
7 rule of law in Ukraine; and

8 (B) the integration of Ukraine into the  
9 European community of democracies;

10 (2) expresses its grave concern over the mur-  
11 ders and disappearances of independent journalists  
12 in Ukraine, including Georgiy Gongadze and Igor  
13 Alexandrov;

14 (3) calls upon the President Kuchma and Prime  
15 Minister Yanukovych to cease persecution of political  
16 opponents and independent journalists and to cease  
17 harassment of individuals who try to exercise their  
18 rights to freedom of speech, expression, assembly,  
19 and association;

20 (4) calls upon President Kuchma and Prime  
21 Minister Yanukovych to end the pattern of clear,  
22 gross, and uncorrected violations of relevant OSCE  
23 human dimension commitments and to respect the  
24 basic freedoms of speech, expression, assembly, and  
25 association; and

1           (5) calls upon the Government of Ukraine to re-  
2       solve the continuing constitutional and political crisis  
3       by assuring—

4           (A) a free, fair, and transparent presi-  
5       dential election in 2004;

6           (B) meaningful access by the political op-  
7       position to state-controlled media, including ac-  
8       cess to newsprint and printing plants;

9           (C) full and uninterrupted access for the  
10      political opposition to postal delivery services;

11          (D) unimpeded access by the political op-  
12      position to public auditoriums and other areas  
13      for gathering and meeting with voters;

14          (E) unimpeded transit by road and air for  
15      opposition candidates;

16          (F) modification of the electoral code in  
17      keeping with OSCE commitments; and

18          (G) full freedom for international observers  
19      to monitor the election and ballot counting at  
20      local, regional, and national levels.

21 **SEC. 5. SENSE OF CONGRESS REGARDING MULTILATERAL**  
22 **COOPERATION CONCERNING UKRAINE.**

23       It is the sense of Congress that the President should  
24      coordinate with other countries, particularly European  
25      countries, to formulate and implement a comprehensive

1 and multilateral strategy to further the purposes of this  
2 Act, including, as appropriate, encouraging other coun-  
3 tries to take measures with respect to Ukraine that are  
4 similar to the measures described in this Act.

5 **SEC. 6. SANCTIONS AGAINST THE GOVERNMENT OF**  
6 **UKRAINE.**

7 (a) APPLICATION AND TIMING OF SANCTIONS.—  
8 Until the President makes the determination that Ukraine  
9 meets all the requirements specified in subsection (b) and  
10 certifies such determination to the appropriate congres-  
11 sional committees, the President shall direct that the sanc-  
12 tions described in subsection (c) shall apply immediately  
13 with respect to Ukraine.

14 (b) CERTIFICATION.—A certification under this sub-  
15 section is a certification transmitted to the appropriate  
16 congressional committees of a determination made by the  
17 President that the following has occurred with respect to  
18 Ukraine:

19 (1) The implementation of free, fair, and trans-  
20 parent elections for president and Parliament fully  
21 consistent with OSCE standards for democratic elec-  
22 tions and in cooperation with relevant OSCE and  
23 Council of Europe institutions.

24 (2) The cessation of all forms of harassment  
25 and repression against the media, independent trade

1 unions, nongovernmental organizations, religious or-  
2 ganizations, and the political opposition.

3 (3) The withdrawal and cessation of politically  
4 motivated legal charges against opposition figures  
5 and independent journalists.

6 (c) SANCTIONS DESCRIBED.—

7 (1) DENIAL OF ENTRY INTO UNITED STATES.—

8 The President shall direct the Secretary of Home-  
9 land Security to deny entry under section 212(f) of  
10 the Immigration and Nationality Act (8 U.S.C.  
11 1182(f)) to the United States of any alien who—

12 (A) is a senior government official in the  
13 government of Ukraine; or

14 (B) is a spouse, minor child, or agent of  
15 such an alien.

16 (2) SEIZURE OF ASSETS IN UNITED STATES.—

17 The President shall direct the Office of Foreign As-  
18 sets Control of the Department of the Treasury to  
19 identify and seize the personal assets or personal fi-  
20 nancial accounts in the United States obtained by  
21 improper or illicit means of any alien who—

22 (A) is a senior government official in the  
23 government of Ukraine; or

24 (B) is a spouse, minor child, or agent of  
25 such an alien.

1           (3) PROHIBITIONS ON LOANS AND INVEST-  
2       MENT.—The President shall direct that—

3           (A) no loan, credit guarantee, insurance,  
4       financing, or other similar financial assistance  
5       is provided on or after the date of the enact-  
6       ment of this Act by any agency of the United  
7       States, including by the Export-Import Bank of  
8       the United States and the Overseas Private In-  
9       vestment Corporation, to the Government of  
10      Ukraine (except with respect to the provision of  
11      humanitarian goods and agricultural or medical  
12      products); and

13          (B) no funds made available to the U.S.  
14      Trade and Development Agency may be made  
15      available on or after the date of the enactment  
16      of this Act for any activity or project of the  
17      Agency in or for Ukraine.

18          (4) INTERNATIONAL FINANCIAL INSTITU-  
19      TIONS.—The President shall direct the Secretary of  
20      the Treasury to instruct the United States executive  
21      director to each appropriate international financial  
22      institution in which the United States participates,  
23      to oppose and vote against the extension by each  
24      such institution of any loan or financial or technical  
25      assistance or grant to the Government of Ukraine

1 (except for loans and assistance that serve humani-  
2 tarian needs).

3 (d) WAIVER.—

4 (1) IN GENERAL.—The President may waive  
5 the application of subsection (c)(1), (c)(2), (c)(3), or  
6 (c)(4), or any combination of such subsections, if the  
7 President determines—

8 (A) that it is in the national security inter-  
9 est of the United States to do so;

10 (B) that a new president is elected in  
11 Ukraine in November 2004 who—

12 (i) has corrected the abuses and elec-  
13 tion irregularities outlined under section 2;  
14 and

15 (ii) has pledged to conduct a free,  
16 fair, and transparent election in the par-  
17 liamentary election scheduled for March  
18 2006; or

19 (C) that in the case of the application any  
20 such subsection or combination of such sub-  
21 sections to an individual, such individual was  
22 not directly or indirectly involved in any of the  
23 abuses or election irregularities outlined under  
24 section 2.

1           (2) CERTIFICATION.—If the President exercises  
2           the waiver under paragraph (1), the President shall  
3           submit to the appropriate congressional committees  
4           a report containing the reasons for such waiver.

5 **SEC. 7. REPORTS.**

6           (a) DATES FOR SUBMISSION.—Not later than 90  
7           days after the date of the enactment of this Act, and every  
8           year thereafter, the President shall transmit to the appro-  
9           priate congressional committees a report containing the  
10          information required by subsection (b). In the case of the  
11          second and all subsequent reports, each such report shall  
12          contain such information with respect to the preceding 12-  
13          month period.

14          (b) CONTENTS.—The reports required by subsection  
15          (a) shall contain information regarding the following:

16               (1) The personal assets and bank accounts of  
17               the current president, prime minister and other sen-  
18               ior government officials of the Government of  
19               Ukraine that are located in the United States or  
20               other country, and, if such assets and accounts are  
21               determined to have been acquired through improper  
22               or illicit means, any actions the United States has  
23               taken to investigate and seize such assets and ac-  
24               counts and encourage such other country to take  
25               similar action.

1           (2) The sale or delivery of weapons or weapons-  
2           related technologies from Ukraine to any country,  
3           the government of which the Secretary of State has  
4           determined, for purposes of section 6(j)(1) of the  
5           Export Administration Act of 1979 (50 U.S.C. App.  
6           2405(j)(1)), has repeatedly provided support for acts  
7           of international terrorism.

8           (3) An identification of each country described  
9           in paragraph (2) and a detailed description of the  
10          weapons or weapons-related technologies involved in  
11          such sale.

12          (4) An identification of the goods, services,  
13          credits, or other consideration received by Ukraine  
14          in exchange for the weapons or weapons-related  
15          technologies involved in such sale.

16          (c) FORM.—A report transmitted pursuant to sub-  
17          section (a) shall be in unclassified form but may contain  
18          a classified annex.

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